

STATE OF MICHIGAN
COURT OF APPEALS

ROY BAILEY, CAMILLA BOLINGER, and
DANIEL MOON,

UNPUBLISHED
April 29, 2003

Plaintiff-Appellants,

v

ROBERT BASTION, BRUCE FRAPPIER,
EUGENE SPRING, JAMES STOOPS, HUGH
VANAMBURG,

No. 231721
Alcona Circuit Court
LC No. 00-010464-CZ

Defendant-Appellees.

Before: Donofrio, P.J., and Markey and Murray, JJ.

PER CURIAM.

Plaintiffs appeal as of right an opinion and order disposing of their claim for declaratory relief. We affirm.

The case arises from the appointment of Camilla Bolinger to, and later removal from, the Board of Directors (the board) of the Lost Lake Woods Association (LLWA) a Michigan Non-Profit Corporation. We believe a recitation of the facts of the case is necessary to provide background information and will be helpful in our analysis of the issues on appeal.

Bolinger, who had been seated by automatic appointment in September 1998 to fill a vacancy on the board through 2000, was improperly removed by the board at an open board meeting on January 16, 1999. After Bolinger was seated to fill the vacancy by appointment, certain board members requested an opinion letter from the LLWA attorneys on the lawfulness of the board's process of filling vacancies on the board by appointment. After receiving the letter, some members of the board misconstrued or misunderstood the content of the requested opinion letter, and were under the assumption that the process of filling vacancies on the board by appointment was in contravention of the Michigan Non-Profit Corporation Act, MCL 450.2515(1). At the same meeting on January 16, 1999, the board replaced Bolinger with one of defendants, Eugene Spring.

Following the board's removal of Bolinger from her position as a director on January 16, 1999, the board again reviewed the requested opinion letter and, apparently, at that point understood the content of the letter to state that the board's method for filling vacancies was not in conflict with MCL 450.2515(1). The board also requested a second opinion letter from

LLWA attorneys again regarding the filling of vacancies on the board. This letter was dated February 5, 1999 and was read at the February 20, 1999 open board meeting. The board members were now under the impression that the board's vacancy filling policy was lawful. Another director on the board moved to reinstall Bolinger as a board member at the February 20, 1999 board meeting. However, a majority of the board was not attained and the motion failed.

In April 1999, the board received two letters from legal counsel advising on the vacancy filling policy and the "Cam Bolinger" situation. Both letters contained the opinion that the removed director, Bolinger, should be reseated and allowed to serve out the remainder of the term. Upon this information, Jack Olgham, Manager of LLWC¹ wrote a letter to Bolinger dated April 17, 1999. In the letter he informed Bolinger that legal counsel's previous opinion had been reversed and that her seating on the board was legitimate. The letter further informed Bolinger that she had been reseated unless she chose to decline the seat, and requested a response from Bolinger prior to April 24, 1999.

Bolinger responded in a letter dated April 23, 1999. She stated that on advice of counsel, she believed that any action taken by the board in response to the legal opinions received would have to be addressed at the next open meeting of the board on April 24, 1999. She also stated that she felt she was "publicly degraded and humiliated when [she] was dismissed in the open Board Meeting" and among other things deserved an "individual public apology by each board member." She concluded her correspondence stating that at that time she could not provide the board with a decision about returning to a position on the board.

Lee Kitzman, the LLWA President wrote another letter to Bolinger on May 7, 1999 informing her that the board seat was rightfully hers and no further action by the board was required. He also invited Bolinger to attend a meeting on May 15, 1999. On May 11, 1999 Kitzman sent another letter to Bolinger informing her that Spring had removed himself from the board and once again invited her to serve on the board. He again stated that no action by the board was required and requested her response by May 14, 1999. Bolinger responded in a letter to the board on May 13, 1999 stating that she did not believe the board's communications to her were timely since she was preparing to leave town for a few weeks. She also stated that "when all procedures are in order, she would reconsider her options."

At the May 15, 1999 open board meeting, a motion to rescind Bolinger's removal and to reseat Bolinger did not receive a majority vote and failed. At an open board meeting held on June 12, 1999, a motion was made stating that since the Bolinger reseating she missed two regular meetings in May and June, an executive session, and she should be removed for excessive unexcused meeting absences. The board voted on the motion and it passed with a majority vote of the directors, thus re-removing Bolinger from the board.

Plaintiffs, all members of the LLWA, filed a complaint in the circuit court acting in propria persona seeking various forms of declaratory relief including the re-seating of Bolinger on the board. Defendants are also members of the LLWA, and are all volunteer members on the board. After an arduous discovery period, the trial court granted a motion for summary

¹ The club affiliated with the Lost Lake Woods Association, LLWA.

disposition in favor of defendants. In the trial court's opinion and order, the court responded to all but one item of plaintiffs' "Request for Resolution" set out in its complaint. The court attempted to resolve all issues except for costs which it reserved ruling on and invited the parties to compile lists of costs and expenses involved. Importantly, in this order, the court ordered that Bolinger be reseated for the rest of the term.

Following the entry of the order, plaintiffs filed several motions in the circuit court. The court denied plaintiffs' motions to compel, for clarification of the orders/reconsideration, for reasonable costs and expenses stating that there was no real "prevailing party" in the case. The court granted defendants' motion to dismiss plaintiffs' motion for clarification and motion to compel, and denied defendants' motion for sanctions because plaintiffs were not represented by counsel. The court also stated that the opinion and order disposed of plaintiffs' entire claim, was a final order, and closed the file. This appeal followed.

On appeal, plaintiffs argue in propria persona that due to several errors made in the circuit court in this action, they now seek "all relief to which they are entitled under Michigan law." Initially, plaintiffs argue that the circuit court erred in the proceedings below when it made several procedural errors. We disagree.

Many aspects of a trial court's control over case proceedings are reviewable for an abuse of discretion. This Court reviews a trial court's decision regarding the meaning and scope of pleadings for an abuse of discretion. *Dacon v Transue*, 441 Mich 315, 328; 490 NW2d 369 (1992). This court reviews a trial court's ruling on a motion to compel discovery for an abuse of discretion. *Linebaugh v Sheraton Michigan Corp*, 198 Mich App 335, 343; 497 NW2d 585 (1993). Additionally, this court reviews a trial court's decision to grant or deny a motion for reconsideration for an abuse of discretion. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000). This Court reviews an award of costs for an abuse of discretion. *Kernan v Homestead Dev Co*, 252 Mich App 689, 691; 653 NW2d 634 (2002). Lastly, the decision whether to award attorney fees and the determination of the reasonableness of the fees are within the trial court's discretion and will be reviewed on appeal for an abuse of discretion. *Bolt v Lansing (On Remand)*, 238 Mich App 37, 61; 604 NW2d 745 (1999).

In civil cases, an abuse of discretion is found only in extreme cases in which the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Dep't of Transp v Randolph*, 461 Mich 757, 768; 610 NW2d 893 (2000).

The obligation imposed by court rule upon trial courts to make sufficiently specific findings of fact and conclusions of law does not apply to decisions on motions. Regardless, findings are sufficient if it appears that the trial court was aware of the factual issues and correctly applied the law. MCR 2.517(A)(4); *In re Cotton*, 208 Mich App 180, 183; 526 NW2d 601 (1994). Furthermore, "[a] judge is presumed to know and understand the law." *In re Costs & Attorney Fees*, 250 Mich App 89, 101; 645 NW2d 697 (2002). Additionally, "[a] court may, in its discretion, dispense with or limit oral arguments on motions, and may require the parties to file briefs in support of and in opposition to a motion." MCR 2.119(E)(3).

Plaintiffs, in propria persona, outline a plethora of alleged errors that they believe the trial court committed in the proceedings in the circuit court. Plaintiffs allege that the trial court failed

to mentally recognize the material facts of the case, arrived unprepared at motions and hearings, and did not use prudent discretion during the course of the proceedings. Plaintiffs further assert that the trial court prematurely addressed issues in attempts to abbreviate the process, never properly completed the case by performing a full adjudication of all plaintiffs' issues, and lastly, did not provide the relief to plaintiff after the court's entry of the amended opinion and order.

This Court can presume that the trial court knew and understood the law. *In re Costs & Attorney Fees, supra*, 250 Mich App 101. Further, the trial court's findings on the motions were sufficient because after reviewing the record it appears that the trial court was aware of the factual issues involved in the case and correctly applied the law. MCR 2.517(A)(4); *In re Cotton, supra*, 208 Mich App 183. Moreover, the court was within its discretion to dispense with oral arguments on motions. MCR 2.119(E)(3).

We find plaintiffs' arguments that the trial court never properly completed the case by performing a full adjudication of all of plaintiffs' issues and provide relief to plaintiffs meritless. The trial court adjudicated each item in plaintiffs' request for resolution listed in plaintiffs' complaint, fixed a remedy by ordering the LLWA board to reseat Bolinger for the remainder of the term, and then closed the case with a final order. Moreover, after thoroughly reviewing plaintiffs' arguments regarding alleged trial court errors in the proceedings together with the record in this case, we have not found that the result was so palpably and grossly violative of fact and logic that it evidenced a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Dep't of Transp, supra*, 461 Mich 768.

Plaintiffs next argue that the trial court erred when it did not deny defendants' motion for summary disposition. This Court reviews de novo a trial court's ruling on a motion for summary disposition. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 159; 645 NW2d 643 (2002); *Spiek v Dep't of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998).

A motion for summary disposition based on the lack of a material factual dispute must be supported by documentary evidence. MCR 2.116(G)(3)(b); *Meyer v City of Center Line*, 242 Mich App 560, 574; 619 NW2d 182 (2000). Defendant had the duty to specifically identify the matters having no disputed factual issues. MCR 2.116(G)(4); *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Defendant also has the initial burden to support its position by affidavits, depositions, admissions, or other documentary evidence. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999). Our review of the record reveals that defendants complied with these requirements.

Plaintiffs, in opposing the motion have the burden of showing by evidentiary materials that a genuine issue of disputed fact exists, and that any disputed factual issue is material to the dispositive legal claims. *Smith, supra*, 460 Mich 455; *State Farm v Johnson*, 187 Mich App 264, 267; 466 NW2d 287 (1990). Plaintiffs may not rest upon mere allegations or denials in the pleadings, but must, by documentary evidence, set forth specific facts showing that there is a genuine issue for trial. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996); *Karbel v Comerica Bank*, 247 Mich App 90, 97; 635 NW2d 69 (2001). Further, speculation and conjecture are insufficient, however, plaintiffs need not rebut every possible theory which the evidence could support. *Detroit v GMC*, 233 Mich App 132, 139; 592 NW2d 732 (1998). Our review of the record reveals that plaintiffs did not comport with these requirements. Because plaintiffs did not provide documentary evidence setting forth specific facts showing that a

genuine issue of fact existed for trial, we find that plaintiffs' arguments fail. *Quinto, supra*, 451 Mich 362; *Karbel, supra*, 247 Mich App 97.

Lastly, plaintiffs argue that the circuit court erred when it denied plaintiffs' motions to compel production of documents, for clarification of the orders, for reasonable expenses, and costs. We will review the trial court's rulings on these motions for an abuse of discretion as set out in the standard of review section, *supra*.

Generally, a motion for summary disposition may be raised at any time, except that it is premature if granted before discovery on a disputed issue is complete. *Townsend v Chase Manhattan Mortgage Corp*, 254 Mich App 133, 140; 657 NW2d 741 (2002). However, summary disposition may be appropriate if further discovery does not stand a reasonable chance of uncovering factual support for the opposing party's position. *Village of Dimondale v Grable*, 240 Mich App 553, 566; 618 NW2d 23 (2000). Clearly, the decision on a motion to compel document production rests in the discretion of the trial court. *Linebaugh, supra*, 198 Mich App 343. Our review of the record does not reveal that the court abused its discretion such that an unprejudiced person, considering the facts upon which the trial court acted, would say there is no justification or excuse for the ruling, or the result is so violative of fact and logic that it evidences a perversity of will or the exercise of passion or bias. *Auto Club Ins Ass'n, supra*, 221 Mich App 167; *Schoensee, supra*, 228 Mich App 314-315.

Plaintiffs' motion for clarification of the orders was essentially a motion for reconsideration. In general, a party moving for reconsideration "must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error." MCR 2.119(F)(3). Whether to grant a motion for reconsideration is a matter left to the trial court's discretion. *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 8; 614 NW2d 169 (2000). A review of the record reveals that plaintiffs' motion for reconsideration merely presented the same issues previously argued to the trial court; thus, the trial court did not abuse its discretion by denying the motion. MCR 2.119(F)(3); *Churchman, supra*, 240 Mich App 233.

While plaintiffs' claim costs and expenses under MCL 450.2493(1), that section of the corporations act is unavailable to plaintiffs in this action. That section applies to actions brought against others to enforce a right of the corporation. The instant action was in part to seat Bolinger, one of plaintiffs, on the board of the LLWA and was successful. However, plaintiffs were unsuccessful in other claims brought against defendants. Plaintiffs did not receive a monetary judgment, compromise (financial), or settlement. No proceeds were received to be accounted for or distributed. In any event, we do not find that the court abused its discretion in declining to award plaintiffs costs in this action. *Kernan, supra*, 252 Mich App 691.

The decision whether to award attorney fees and the determination of the reasonableness of the fees are within the trial court's discretion. *Bolt, supra*, 238 Mich App 61. A review of the record does not reveal that the court abused its discretion such that an unprejudiced person, considering the facts upon which the trial court acted, would say there is no justification or excuse for the ruling, or the result is so violative of fact and logic that it evidences a perversity of will or the exercise of passion or bias when it denied plaintiffs reasonable attorney fees and

costs. *Auto Club Ins Ass'n, supra*, 221 Mich App 167; *Schoensee, supra*, 228 Mich App 314-315.

Affirmed.

/s/ Pat M. Donofrio

/s/ Jane E. Markey

/s/ Christopher M. Murray